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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-eighth session

SUMMARY RECORD OF THE 1450th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 14 March 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10 a.m.

STATEMENT BY THE HIGH COMMISSIONER FOR HUMAN RIGHTS

1. The CHAIRMAN welcomed the High Commissioner for Human Rights and thanked her for finding time for the Committee when she was very busy with the preparations for the World Conference against Racism to be held in September 2001, of which she was the Secretary-General. The Committee stood ready to play a leading role in the preparations for the World Conference, and during the Conference itself.

2. Mrs. ROBINSON (High Commissioner for Human Rights) said that the Deputy High Commissioner for Human Rights, Mr. Ramcharan, had informed her of the substance of the discussions at the Committee's opening meeting, which she regretted she had not been able to attend. She wished personally to welcome the new members, Mr. Tang and Mr. Thornberry, and informed the Committee that she had sent a letter of thanks to the members who had resigned, Mr. Nobel and Mr. Bryde.

3. She noted with satisfaction that the preparations for the World Conference had had a beneficial effect on the attitude of States towards the Convention. Since the Millennium Summit, in September 2000, a further five States had ratified the Convention and three States parties had made the declaration under article 14, bringing the number of ratifications to 157 and the number of declarations under article 14 to 33. During the Millennium Summit, she had strongly encouraged States to accede to international human rights treaties, and she had sent a letter to all the Heads of States that had not yet ratified the Convention or made the declaration under article 14, inviting them to do so as soon as possible.

4. With regard to the activities of the Office of the High Commissioner, she said that she had launched a fresh appeal for voluntary contributions in 2001 with a view to financing a biennial programme to improve support services for the system of monitoring the application of international instruments, and that at the most recent monthly meeting with government representatives she had placed particular emphasis on support for treaty bodies. She expected that additional funds would be forthcoming, enabling the Office of the High Commissioner to continue to reorganize the team in charge of the individual communications received by the three relevant treaty bodies - the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination. New staff had been hired and the team's working methods were being reviewed so as to enable it to assemble the Committee's jurisprudence in one comprehensive and coherent compilation.

5. She welcomed the fact that the Committee members had contributed to the preparations for the World Conference by participating in regional meetings and drawing up individual or collective documents. The document containing the Committee's contribution (A/CONF.189/PC.1/12) had been distributed to the inter-sessional working group and to the Preparatory Committee for reference purposes. It had been no easy task to prepare the draft declaration and programme of action of the World Conference (A/CONF.189/WG.1/3), as any document of that kind had to command a consensus. It had therefore been necessary to include the ideas obtaining the broadest support, while certain demands from regional groups had had to be eliminated. A document containing all the plans of action drawn up by the regional groups

and all the proposals for modifications and additions was nevertheless being prepared and would be submitted to the inter-sessional working group for its consideration at its forthcoming session in May 2001. The Committee could make a useful contribution to the preparation of that document by making targeted proposals to advance the review of the draft declaration and plan of action so that most of the work would be done before the June 2001 session of the Preparatory Committee.

6. The CHAIRMAN applauded the High Commissioner's efforts to encourage States to ratify the Convention and to make the declaration under article 14. He noted with satisfaction that the reorganization within the Office of the High Commissioner would facilitate consideration of communications by the Committee. He informed the High Commissioner that the Committee was currently drafting suggested changes that could be inserted in specific articles and sections of the draft declaration and plan of action. Those suggestions would be made available to the regional groups, the officers of the Conference and the High Commissioner as soon as they were ready. The coordinator of the contact group, Ms. McDougall, who was attending the inter-sessional working group's meetings, would present them and offer the Committee's services to the working group.

7. Mr. de GOUTTES said that, during the seminar on recourse procedures available to victims of racial discrimination, held in Geneva in February 2000, it had been recommended that States parties should make the declaration under article 14, as only 33 of them had done so. As that recommendation did not figure in the draft declaration and plan of action, the Committee's contact group had suggested to the inter-sessional working group that it appear in paragraph 140 of the draft. Furthermore, since it was to be anticipated that the volume of work of the communications team would increase and since it was necessary to engage the services of top-flight legal specialists, would it not be best for that team to become a permanent fixture of the Office of the High Commissioner?

8. Mrs. ROBINSON (High Commissioner for Human Rights) considered it entirely appropriate that the recommendation mentioned by Mr. de Gouttes should figure in the draft declaration and plan of action. It was also highly desirable that the communications team should become a permanent fixture of the Office of the High Commissioner and she was hopeful that in the forthcoming biennium the Office of the High Commissioner would create additional posts, making it possible to provide the treaty bodies with effective support, and not only when it came to consideration of communications. The decision depended on the Advisory Committee on Administrative and Budgetary Questions (ACABQ), and the High Commissioner therefore invited the Committee to encourage ACABQ members to support future proposals made by the United Nations Secretariat with a view to increasing the High Commissioner's staff, as those proposals would pave the way for the establishment of a permanent communications team.

9. Mr. ABOUL-NASR said that it would be desirable for the draft declaration and plan of action to refer to the problem of reservations, which sometimes cancelled out the effects of ratification of the Convention by the State party concerned and led to non-compliance with the provisions of article 9 of the Convention.

10. Mr. SHAHI paid tribute to the considerable work involved in drafting the document prepared by the Secretariat, which could not, of course, address all concerns. He was

nevertheless surprised that no regional group had raised the matter of the lessons to be learned from the interethnic conflicts of recent decades or referred to the Secretary-General's statements on the reinforcement of peacekeeping operations and the prevention of crimes against humanity.

11. Mr. PILLAI observed that many States had for some time been establishing national human rights commissions, often thanks to the assistance provided by the Office of the High Commissioner, and that those commissions had played a very active role in the preparations for the World Conference. He therefore wondered whether it would be possible for the draft declaration and plan of action to underscore the role of those commissions at the national and international levels and their cooperation with the Committee.

12. Mr. BOSSUYT asked the High Commissioner whether the absence of any reference to the Convention and the Committee in the Secretariat's draft was the result of indifference or reluctance. Could the High Commissioner advise the Committee on how to modify the draft on that point?

13. Mr. RECHETOV emphasized the crucial role to be played by the monitoring mechanism to be established after the World Conference. The body to be created to that end should benefit from the services of the Committee's experts and draw on the experience acquired by the Committee thanks to its consideration of reports and to its continuing dialogue with States parties.

14. Mrs. ROBINSON (High Commissioner for Human Rights) said that she was naturally in favour of enhancing the Committee's participation in the World Conference against Racism. She was pleased to announce that six members of the Committee would be invited to the World Conference, which was more than initially planned. She recalled that she regularly urged all States to ratify the Convention and encouraged all States parties to make the declaration under article 14 of the Convention and to submit their reports on time.

15. The World Conference's declaration and plan of action should of course contain an analysis of ethnic conflicts. A regional seminar of experts on the prevention of ethnic and racial conflicts in Africa had been held in October 2000 in Addis Ababa and had adopted interesting conclusions and recommendations. In its present state, the draft declaration and plan of action merely presented a framework, and it was not too late to include in it any other topic worth mentioning.

16. The national human rights commissions were playing a major role in preparations for the World Conference. National human rights institutions increasingly relied on the experience acquired by existing institutions to guide their activities, in particular in the fight against racism and racial discrimination. She mentioned General Recommendation No. XVII (1993) of the Committee, on the establishment of national institutions to facilitate implementation of the Convention, and recommended that the Committee pursue its reflection and make proposals on the matter.

17. With regard to the fact that the draft declaration and plan of action made little reference to the Convention and the Committee, she said that the text could be improved in the course of forthcoming meetings of the inter-sessional working group and the second Preparatory

Committee. With regard to the outcome of the World Conference, she trusted that a five-year review procedure would be established and that mechanisms to fight racism and racial discrimination would take account of the Committee's work and the experience it had acquired over 30 years.

18. The CHAIRMAN expressed deep gratitude to the High Commissioner for her support. He was pleased that a greater number of Committee members would be invited to take part in the World Conference and said that the Committee would spare no effort to ensure that the Conference resulted in a declaration and plan of action with a practical approach.

19. Mrs. Robinson withdrew.

The meeting was suspended at 10.50 a.m. and resumed at 11 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Fifteenth periodic report of Germany (CERD/C/338/Add.14) (continued)

20. At the invitation of the Chairman, the members of the delegation of Germany resumed their places at the Committee table.

21. The CHAIRMAN invited the German delegation to answer the questions asked by the Committee members at the previous meeting.

22. Mr. REIN (Germany), replying to a question concerning national minorities, said that when Germany had signed the Council of Europe's Framework Convention for the Protection of National Minorities, it had made a declaration on the area of application of the Convention in Germany to the effect that since the Framework Convention contained no definition of the notion of national minorities, it was up to the contracting parties to determine the groups to which the Convention would apply after ratification. National minorities in the Federal Republic of Germany were the Danes of German citizenship and the members of the Sorbian people with German citizenship. The Framework Convention would also be applied to members of the ethnic groups traditionally resident in Germany, namely the Frisons of German citizenship and the Sintis and Roma of German citizenship. According to the Federal Republic of Germany's interpretation, the ethnic groups belonging to the category of national minorities within the meaning of the Framework Convention lived in the country on a regular basis, had their own language, culture or religious identity and had German citizenship. The Jewish community in Germany did not see itself, with regard to the protection of minorities, as an independent ethnic group, but rather defined itself as a religious community in Germany. The groups that had arrived in the country after the Second World War were not considered national minorities within the meaning of the Framework Convention. Those groups, which differed from the majority of the population in language, culture and religion and were not considered national minorities, nevertheless benefited from the general protection of their rights, including the right to freedom of religion, the right to freedom of expression and assembly and the right to be free from discrimination. The groups considered to be national minorities also benefited from international protection. Indeed, the Framework Convention for the Protection of National

Minorities provided for a monitoring mechanism by virtue of which the States signatories presented reports which were considered by an advisory committee and could be visited by experts.

23. In 1996, the German and Danish authorities, together with those of the Land of Schleswig-Holstein, had founded the European Centre for Minority Issues, which was working, inter alia, on the situation in the former Yugoslavia, the Balkans and the Baltic States. The Centre's headquarters were in a German border town very close to Denmark.

24. The possibility of offering Islamic religious instruction in German schools commanded a broad social consensus, given the presence of about 3 million Muslims in the country. The Länder, which were responsible for education, nevertheless found it difficult to establish the content of that religious instruction in the absence of a contact point, since Islam had no organizational structures similar to those of the Christian churches. After the Berlin Higher Administrative Court had, on 4 November 1998, granted an Islamic association in Berlin the right to give religious instruction, other Muslim associations had contested that association's exclusive right to design religious instruction for Berlin's Muslims.

25. In answer to a question on people engaged in slave and forced labour under the Nazi regime, he said that legislation adopted on 12 August 2000 had established a federal foundation called "Remembrance, Responsibility and Future" to compensate the victims of forced labour. The Government and industry had each contributed half of the funds, the total amount of which had been set at 10 billion Deutsche marks. Initially somewhat reluctant to pay its share for fear that litigation in the United States would give rise to further claims, German industry, which had just obtained the guarantees it wanted, would now provide the necessary sum.

26. Mr. FUCHS (Germany), answering questions on police violence towards foreigners in particular, said that any recourse to excessive force was investigated and penalized by disciplinary measures or court proceedings. The police could also be the target of violent acts, and in 2000 eight police officers had been killed in the line of duty. However, in order to ensure that police officers performed their tasks without violence, training programmes were given and existing programmes constantly reviewed and improved.

27. With regard to the forced repatriation of foreigners, any such repatriation should in principle be carried out according to the rules, and all aspects, in particular medical considerations, taken into account. Training programmes for those in charge were far-reaching and emphasized respect for human dignity, the values of tolerance and social and psychological relations with foreigners. For several years now, there had been an acknowledged need to recruit more persons from foreign backgrounds into the police forces. In 1996, there had been 239 police officers of foreign origin. The delegation had no more recent statistics on the matter, but apparently a growing number of people from foreign backgrounds were entering the police force. To become a police official, those people had to have German citizenship, had to have resided in the country for a certain number of years and had to have a good command of German. Generally speaking, police officers were neither more nor less xenophobic than the population as a whole but, given their role in society, their conduct had to be exemplary, even in situations of stress, and the German authorities were therefore establishing structures to help police officers react appropriately, even in the most difficult of situations.

28. Mr. HABERLAND (Germany) said that the new Nationality Act, which had entered into force in January 2000, greatly facilitated the acquisition of nationality and naturalization and would enhance integration of foreigners. The continuing principle of origin, according to which only children with at least one German parent acquired German nationality, was supplemented by the principle of the law of place of birth (jus soli), according to which children born in Germany to foreign parents acquired German nationality at birth if one parent had been legally resident in Germany for at least eight years and had had a right to reside or an unlimited residence permit for at least three years. The number of children who had become naturalized Germans had increased greatly in 1999 (among them, 3,000 Turks). The conditions for naturalization had also been made more flexible for children under 10 born before the new Act had entered into force. That measure had not, however, been as successful as the authorities had anticipated, perhaps because the parents had to request naturalization within a certain time and the fee was relatively high. The deadline had therefore been extended and the fee decreased. The condition that one of the parents must have legally resided in Germany for at least eight years or have had an unlimited residence permit for at least three years had been set because many people had residence permits that were repeatedly renewed.

29. The 1993 amendments to the Asylum Act and the adoption of new article 16 of the Basic Law, mentioned in paragraph 79 of Germany's previous report (CERD/C/299/Add.5), had been decided on after Germany had been confronted with a massive influx of refugees from the former Yugoslavia and, at the same time, had observed that a number of people, from Romania and Bulgaria in particular, wished to come to Germany for economic reasons and not for reasons arising from any form of political persecution. Asylum proceedings were relatively rapid in Germany and lasted on average three months, but they could be followed by an appeal to the courts which could take much longer. It was also true that not all asylum-seekers whose request was turned down were sent back to their country, for several reasons: the persons concerned might not have any papers or might be in unclear situations, their country of origin might refuse to take them back or they might have started a family in Germany in the meantime, in which case they could be granted a residence permit for humanitarian reasons.

30. Lastly, the Länder carried out many projects with a view to promoting the cultural activities of minorities.

31. Mr. RADZIWILL (Germany) said that according to a survey carried out in 1999, two thirds of foreign households settled in Germany were satisfied or very satisfied with their housing conditions and only 4 per cent were very dissatisfied. Foreign groups were concentrated in certain neighbourhoods partly for economic reasons but above all because immigrants preferred to live with people of the same culture. The aim of the German Government was to take all necessary measures to improve housing, while allowing everyone living in the country to choose his or her place of residence. In that respect, the federal Government and the Länder had launched a programme to supplement existing urban projects.

32. Ms. ZEITZ (Germany) said that under the new regulations that had entered into force after the publication of Germany's report, asylum-seekers had access to the labour market. In addition, any victim of an act of violence, whether German or foreign, was entitled to seek

redress before the courts. Indeed, 10.9 million Deutsche marks had been set aside in the 2001 State budget to compensate the victims of acts of violence committed by extreme right-wing movements.

33. The federal Government had considered it necessary to draft two parallel pieces of legislation with regard to the fight against discrimination, one concerning civil rights, the other concerning labour law. That mechanism would guarantee that the fight against discrimination would be effective in terms of access to jobs, social benefits and training. The legislation would be applied within three years.

34. Mr. BLATH (Germany) said that there had been 59 per cent more wrongful acts connected with xenophobia in 2000 than in 1999. There were several reasons for the increase, including imitation among the different extreme right-wing groups and the public's heightened awareness of the need to denounce xenophobic activities, which probably also explained why the number of complaints had increased. It was difficult to forecast trends in xenophobic criminal activity in the absence of any reliable statistical models.

35. Mr. HERMANN (Germany) said that it was extremely difficult to ban a political party. Under the Basic Law, a party could not be banned unless its aim was to disrupt internal democracy. When a party was nevertheless banned, it was immediately dissolved and its assets could be seized and donated to charity. Only twice had a political party been banned in Germany: a neo-Nazi party in 1952, and the Communist party in 1959. In January 2001, the federal Government had asked the federal constitutional court, with the backing of Parliament, to ban the far right NPD party. That reflected a very broad consensus among the German political class in favour of banning a party that encouraged populist collectivism, whose programme was racist and anti-Semitic, which was connected to national socialism and whose activities were characterized by violence.

36. Mr. STOLTENBERG (Germany) said that the German human rights institute founded in Berlin aimed to disseminate information on human rights on the Internet, to conduct research in the field of human rights, in particular concerning prevention and repression strategies, to provide advice on human rights, especially to political parties, to cooperate with the National Coordination Centre for Human Rights in defining programmes aimed at government officials in charge of maintaining order and teachers, and to promote dialogue and cooperation between NGOs and public bodies. The institute was made up of representatives of the federal Government, Parliament, the media, NGOs and academic circles.

37. The German delegation did not have detailed information on the federal Government's intention concerning the possibility of making the declaration under article 14 of the Convention, although it might well do so since the grounds for the reservations made when various international human rights treaties had been ratified were to be reconsidered.

38. Mr. LEWALTER (Germany) said that foreigners had made a substantial contribution to Germany's prosperity after the Second World War and that most of the German population was now convinced, given the ongoing process of globalization, that it would have to live in harmony with them.

39. A member of the Committee had asked why racist movements were systematically considered to belong to the extreme right-wing. The fact was that the far right was hostile to various categories of people it considered "weak", including, for example, foreigners, but also handicapped people. It was therefore not just racist but purely and simply hostile to the very notion of human dignity.

40. In answer to the questions raised by Mr. Aboul-Nasr, he said, in connection with the fight against AIDS, that a German company was getting ready to market a drug intended to prevent HIV transmission from mother to child and that it had stated it would provide the drug free of charge for five years to developing countries. Other companies had also said they would lower prices for AIDS medication within the framework of the WHO appeal. With regard to the elimination of anti-personnel landmines, maps indicating where the mines had been laid had been made available to the countries concerned, as had systems aimed at detecting their presence.

41. Mr. ABOUL-NASR expressed satisfaction at the quality and accuracy of the German delegation's replies to the questions of Committee members. With particular reference to the issue of landmines, it did not suffice to establish and communicate maps of mined areas to solve the problem: cooperation efforts at mine clearance were also required.

42. Mr. DIACONU said that there was no universally accepted definition of what constituted a minority and that it was therefore up to each State party to the Convention to designate and name the minorities it recognized on its territory. Certain European States recognized no national minorities, while others, such as Germany, only recognized certain minorities. The decision was obviously eminently political and within the competence of each sovereign State, but the Committee's mandate was nevertheless to consider the question at least from the human rights point of view. For the Committee, all ethnic groups were equal, whether they had been in the country for 10 years or for centuries. Germany had granted minority status to the Danish minority in 1955, then to the Sorbian people after the reunification of Germany, and recently to the Roma. It nevertheless had to make progress in other respects in that field.

43. Mr. RECHETOV thanked the German delegation for its prompt replies to the many questions it had been asked. Referring to the three criteria applied by the German Government in recognizing that a group of people had minority status, i.e. history, citizenship and the practice of other European countries, he said that the last two did not seem to him to be relevant, while the historical criterion, for its part, might be seriously undermined by recent events justifying prompt recognition of national minority status for certain communities of people who had not been living in the country for long.

44. Mr. THORNBERRY expressed surprise that certain communities of people had not been recognized as national minorities in Germany. He nevertheless thought he understood why that status had not been granted to the German Jewish community, at the request of the latter, which he thought was justified even if the community's position might change over time. In international law, the notion of minority was very close to that of autonomy. Although the human rights treaty bodies did not share the Governments' point of view on the matter, they were nevertheless all interested in the express desire of the communities to be or not to be recognized as national minorities.

45. Mr. DE GOUTTES asked whether the recently established German human rights institute could be considered a true national or federal human rights commission or institution, within the meaning of the principles applicable to national human rights institutions, or Paris Principles. For a long time the German Government had been visibly reluctant to set up a national commission for the promotion and protection of human rights and even to create a post of human rights ombudsman at the federal level. Could the delegation explain why that was so?

46. Mr. SHAHI said he had been informed that the murder of trade union members and public officials who had apparently been stigmatized as enemies of the nation had been advocated on German Internet sites, reportedly with names, addresses and photographs. He asked to what extent German legislation had provided penalties for that kind of activity and whether incitement to murder on the Internet was in any way prohibited.

47. Mr. YUTZIS inquired how the German authorities explained the increase in xenophobic and anti-Semitic crimes committed in the country. There had apparently been 1,100 cases of the kind in 2000, far exceeding those in 1996, 1997 and 1998. He also asked the German delegation to specify the nature of the obstacles to the establishment of a national institution for the promotion and protection of human rights and to indicate on the basis of what criteria the members of such an institution would be chosen.

48. Mr. ABOUL-NASR said that he personally was satisfied with the delegation's reply to the question regarding recognition of certain communities as national minorities. The recognition of the Jewish community as a national minority was an extremely difficult and sensitive issue, as the Jewish people themselves did not agree on the definition of the word "Jewish". It was therefore important to take account of the point of view expressed by a given community on whether or not it wished to be designated as a national minority.

49. Mr. LEWALTER (Germany) said that the German Government was determined to eliminate racism and intolerance in the country and to ensure respect for international human rights standards for all foreigners, whether or not they had been defined as national minorities. The German Government was altogether entitled to consider the question of recognition of Jews as a national minority. With regard to the messages of incitement to murder posted on the Internet, it was the task of prosecutors to bring the authors of those messages before the courts, but Germany and many other countries had encountered legal and technical difficulties in penalizing activities conducted over the Internet. Lastly, the German Government was not at present in a position to explain the reasons for the increase in racist and/or xenophobic crimes in Germany, but scientific studies were being carried out in order to enhance understanding of the phenomenon.

50. Mr. STOLTENBERG (Germany), replying to the questions concerning the establishment of a national institution for the promotion of human rights, recalled that the Convention left it entirely up to the States parties to choose the instruments to safeguard and promote human rights that they considered most appropriate. The German Government considered, in that respect, that a national agency, be it a commission or ombudsman, would not be able to deal with all infringements of human rights. For that reason, Germany had established several bodies of a variety of natures to fight xenophobia and racial discrimination, for it preferred to share the workload arising from such conduct among different institutions.

51. Mr. BOSSUYT (Country Rapporteur) expressed satisfaction at the fruitful dialogue established between the Committee members and the German delegation and at the candour with which the delegation had answered questions. It was to the delegation's credit that it had acknowledged the existence of problems of racism and even the resurgence in racist and xenophobic acts, because the State party could not tackle the problem if it denied its existence. In that regard, the German authorities had to redouble their efforts, in particular by conducting studies and in-depth surveys of the true causes of that increasingly widespread phenomenon and of the most appropriate and effective means of fighting it.

52. With regard to the question of the integration of minorities, Germany made a distinction between integration and assimilation. For Germany, the promotion of integration meant making an effort to facilitate the harmonious participation in society of persons from foreign backgrounds without having those persons deny their cultural specificities. According to the Committee, protecting minorities meant, rather, making an effort to enable people from foreign backgrounds to preserve their identity and their cultural specificities.

53. The CHAIRMAN expressed satisfaction at the open and constructive dialogue established with the German delegation and at the detailed nature of the answers given. He declared that the Committee had completed its consideration of the fifteenth periodic report of Germany.

The meeting rose at 12.55 p.m.